

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
March 17, 2008**

Members Present:

Michael Gallagher
Edward Hardemon
Helen Dutmer
George Alejos
Paul Klein
Mary Rogers
Gene Camargo
Maria D. Cruz
Mimi Moffat
Henry Rodriguez

Staff:

Ted Murphree, Asst. City Attorney
Chris Looney, Planning Manager
Rudy Niño, Senior Planner
Michael Farber, Planner
David Simpson, Chief Sign Inspector

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order.

Case A-08-030 was withdrawn by the applicant prior to the meeting.

In order to gain 10 members Mr. Gallagher moved Item #11 & Item #12 to the beginning of the meeting.

Sign Master Plan No. 08-008

David Simpson, Chief Sign Inspector, briefed Board Members on Sign Master Plan for Centerview Shopping Center, located at North West Loop 410 and Callaghan Road.

Sign Master Plan No. 08-008 was voted on and approved with all members voted in affirmative.

Ms. Rogers arrived at 1:13 p.m.

Sign Master Plan No. 08-009

David Simpson, Chief Sign Inspector, briefed Board Members on Sign Master Plan for University Heights, located at West Hausman and University Heights.

Sign Master Plan No. 08-007 was voted on and approved with all members voted in affirmative.

[REDACTED]

Mr. Gallagher called roll of the applicants for each case.

Mr. Klein motioned to move Case No. A-08-024 to the end of the agenda with all members voting in affirmative.

Mr. Klein motioned to move Case No. A-08-046 to the end of the agenda with all members voting in affirmative.

[REDACTED]

CASE NO. A-08-034

Applicant – Joe Alvarez
Lot 4, Block 10, NCB 16030
6710 Babcock Road
Zoned: "MF-33" Multi-Family District

The applicant is requesting for a 2-foot variance from the requirement that a solid screen fences in side and rear yards to be no taller than 6 feet, in order to keep an 8-foot tall solid screen fence in the rear yard.

Michael Farber, Planner, presented background and staff's recommendation of approval on this case. He indicated 40 notices were mailed, 0 notices were returned in favor and 0 notices were returned in opposition.

Tim Smith, representative, stated the reason for this request was for security reasons. The general contractor had many vandalisms and he had to make police reports. He also stated paint was being stolen. He further stated the fence would keep children from jumping it and going into the drainage ditch.

The following citizen(s) appeared to speak:

Nicole Rogers, citizen, had concerns with who would be maintaining the fence.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-034 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case **A-08-034**, the request of **Joe Alvarez**, on property that is located at **6710 Babcock Road**, legally described as **Lot 4, Block 10, NCB 16030**, be approved for a variance **to keep an 8-foot fence that has been built as per site plan**. We specifically find that such variance will not be contrary to the public interest in that **the best we can tell there no notices returned in opposition and the person that appeared before the board was neither in favor or opposition but voiced concerns**

regarding the maintenance and graffiti that might be placed on this fence. The applicant has indicated the owners, the applicant in this case, would be responsible for the maintenance on the fences. Due to the special conditions, literal enforcement of the ordinance would result in unnecessary hardship in that applicant has stated there has been in the past numerous break-ins by individuals stealing paint and placing graffiti on existing buildings and from the aerial photo that has been shown to us it seems like the property is very successible to that and as much to the west and to the east there seems to be a considerable amount of vacant property that is overgrown that would allow intrusions on to the property in question. Thirdly, the spirit of the ordinance is being observed in that the fencing that is being requested by the applicant will provide some protection or provide protection to the existing apartment complex. The property in question lies adjacent to existing commercial businesses and like uses to the south and that being of an apartment complex. The variance will not authorize the operation of a use other than those uses specifically authorized in the ordinance in that the property is zoned "MF-33" Multi-family for which it is being used and the solid screen fencing that has been placed on the property merely is an accessory or use to the existing use. Such variance will not substantially or permanently injure the district in which the variance is sought in that again accordingly to the aerial photo rather major drainage channels exist to the west, similar multi-family uses to south, and commercial to the northeast of the property in question. Such variance will not alter the essential character of the district in which the variance is sought in that the fencing which has been erected is to be maintained and so has been indicated by the applicant's representative in this case. Such variance will be in harmony with the spirit and purpose of this chapter in that the Unified Development Code gives the Board of Adjustment the authority to grant such a variance when it is felt that it will not be deponent to the adjacent development. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property and unique circumstances were not created by the owner of the property, and not merely financial, and are not due to or the result of the general conditions in the district in which the property is located as mentioned before the location of the property being adjacent to a major drainage channel and wooded areas to the northeast in this members opinion justifies the erection of the 8-foot fence. The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specific district in that the proposed variance will not weaken the overall zoning plan of the area. The variance will not adversely affect the public health, safety, or welfare of the public in that proper permits should be obtained if this variance is granted to ensure that the structure is structurally sound and appropriately located within the subject property. The motion seconded by Ms. Rogers.

AYES: Camargo, Rogers, Cruz, Dutmer, Rodriguez, Hardemon, Klein, Alejos, Gallagher
NAY: Moffat

THE VARIANCE WAS GRANTED.

CASE NO. A-08-045

Applicant – Sandra L Kubena
Lot 29, Block 1, NCB 13572

4439 Forestgreen Street

Zoned: "R-5" Residential Single-Family District

The applicant is requesting for a complete variance from the requirement that a minimum 5-foot side and rear setback be maintained in "R-5" districts to keep an accessory structure on the side and rear property lines.

Michael Farber, Planner, presented background and staff's recommendation of denial of this case. He indicated that there were 24 notices mailed, 0 notices were returned in favor and 1 notice was returned in opposition and no response from Pecan Valley Neighborhood Association.

Sandra Kubena Rollins, applicant, stated the reason for this request was to use the shed as storage for lawn mower and tools. She further stated she wanted to put the tools away to make room for a playground for the grandkids. She also stated it was their ignorance for not pulling the permits. She further stated she understand she would have to take it down if asked by the utility company.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-045 closed.

MOTION

A motion was made by **Mrs. Dutmer**. In Case No. **A-08-045**, I move approval, the property is under the applicant **Sandra L Kubena** now known as **Sandra Rollins**, the legal description is **Lot29, Block 1, NCB 13572**, address is **4439 Forestgreen Street**, the zoning is **"R-5" Residential Single-Family**, the request is for a **complete variance from the requirement that a minimum 5-foot side and rear setback be maintained in "R-5" district to keep an accessory building structure on the side and rear property lines**, the subject property is located on **Forestgreen Street just east off IH 37**, the property sits in a **residential neighborhood and is primarily surrounded by single family residences and "R-5" zoning exists on all sides of the subject property**. The property to the north is occupied by a school which is owned by a nearby church. The applicant is applying for a variance to keep an existing shed on the rear and side property lines on the northwest side of the subject property. The shed sits within an existing 12-foot maintenance access easement. The said easement for electrical, gas, and cable vision lines. The applicant is applying for a variance from the minimum rear and side setbacks in order to keep an existing shed on rear and side property lines. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located. Such variance will not substantially or permanently injure the district in which the variance is sought. Such variance will not alter the essential character of the district in which the variance is sought. The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property and not personal in nature. The variance will not substantially weaken the general purposes of this chapter or the regulations herein established for the specific district in that **the owners have acquiesced entrance to the**

property should the need arrive. The variance will not adversely affect the public health, safety, or welfare of the public in that **all of the land surrounding this shed is vacant.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **some evidence the shed is there and they have decided they will vacant the shed should they need to get into the 12-foot variance.** Such variance will not substantially or permanently injure the district in which the variance is sought in that **it sill will remain residential.** Such variance will not alter the essential character of the district in which the variance is sought in that **it will still remain "R-5" Single-Family Residential.** Such variance will be in harmony with the spirit and purpose of this chapter in that **everything remains the same except the shed.** The motion seconded by **Mr. Rodriguez.**

AYES: Dutmer, Rodriguez, Camargo, Rogers, Cruz, Alejos, Hardemon

NAYS: Moffat, Klein, Gallagher

THE VARIANCE WAS NOT GRANTED

CASE NO. A-08-047

Applicant – Adalberto Hernandez
Lot 5, Block 1, NCB 18308
7990 Tezel Road
Zoned: "C-3" General Commercial District.

The applicant is requesting for a 2-foot variance from the requirement that fences in side and rear yards be no taller than 6 feet, in order to keep an 8-foot tall fence in the side and rear yard.

Mike Farber, Planner, presented background and staff's recommendation of approval of this case. He indicated that there were 7 notices mailed, 1 notice was returned in favor and 0 notices were returned in opposition.

James Samelson, representative, stated the owner is requesting this variance due to a number of burglaries. He also stated cars and parts were stolen. He further stated since erection of the fence there has not been any theft or vandalism.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-047 closed.

MOTION

A motion was made by **Mr. Camargo.** I would like to move that in Case No. **A-08-047**, the request of **Mr. Adalberto Hernandez**, on property known as **7990 Tezel Road**, also known as **Lot 5, Block 1, NCB 18308**, and zoned **"C-3" General Commercial District**, be granted a **2-foot variance from the requirement that fences in side and rear yards be no taller than 6**

feet, in order to keep an 8-foot tall fence on the side and rear property lines. Information has been presented to us today that such variance will not be contrary to the public interest from the notice mailouts there were 7 of I believe that were stated that mailed to adjacent property owners and one was returned in favor and none were returned in opposition. Secondly due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that it has been shown on slides and on our maps that the property abuts a drainage easement, drainage right of way to the south that is heavily wooded as shown on the aerial photograph and also it has been stated that to the north and adjacent to the location of the 8-foot fence that exist is owned by the applicant in this particular case. Thirdly that the spirit of the ordinance is observed and substantial justice is done the applicant in this case or has been stated by the representative was erected in order to protect the investment and has submitted numerous police reports that have been filed due to theft and burglaries on the subject property over the past years. The variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that the property is zoned a "C-3" Commercial and an automobile facility is located on the property and one which is permitted within that zoning classification. The variance will not substantially or permanently injure the district in which that variance is sought in that the property is surrounded to the south by a "C-3" Commercial similar zoning classifications, the property to the north has been stated by the applicant's representative is owned by the owner and is currently under consideration to rezone the property from "R-6" Residential to I assume a commercial classification. The variance will not substantially or permanently injure the district in which that variance is sought for the reasons I have just stated that it is surrounded by commercial zoning to the south and possibility in the near future to the north. Such variance will not alter the essential character of the districts in which the variance is sought and that again just based by on the aerial photos that we have on the screen now the fence in fact is not visible from neither the north, east, or south of the subject property. Such variance will be in harmony with the spirit and purpose of this chapter in that the proposed structure will remain the quality of being in good repair in that photographs that have been shown to us that it is a substantially metal fence that has been constructed that will probably be in existence for a number of years just based on the construction photos that have been submitted. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and the unique circumstances were not created by the owner that it has been stated that based on the fact that there has been numerous break-ins onto the property stealing car parts in this case has necessitated in making an investment as been stated \$20,000 by the representative to construct such a fence in order to protect his business. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that the variance will not weaken the overall zoning plan of this area. The variance will not adversely affect the public health, safety or welfare of the public in that it has been stated by staff that the barbwire that currently exists on top of this fence is no longer permitted by the code and the applicant has agreed to remove such if the variance is granted. The motion was seconded by Mr. Rodriguez.

AYES: Camargo, Rodriguez, Alejos, Cruz, Hardemon, Moffat, Klein, Rogers, Dutmer, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Board Members took a 10 minute recess.

CASE NO. A-08-048

Applicant – One Dominion Place

Lots 132 and 133, Block 1, NCB 18338

23127, 23103 IH-10 West

Zoned: "C-2 GC-1" Commercial Hill Country Gateway Corridor Overlay District and "O-1 GC-1" Office Hill Country Gateway Corridor Overlay District

The applicant is requesting for a 10-foot variance from the Hill Country Gateway Corridor District Plan Requirement that a minimum 25-foot front natural buffer be maintained for properties along IH-10 in order to allow 15-foot natural buffer along the front property line.

Michael Farber, Planner, presented background and staff's recommendation of approval of this case. He indicated that there were 26 notices mailed, 0 notices were returned in favor and 2 notices were returned in opposition.

Michael Taylor, Planner, stated the lot to the north has an 18-foot rockwall that would prevent moving the buildings further to the west which would mean the applicant would have to have fewer buildings. He also stated they are at the minimum for parking and fire lanes. The building width is small for the type of tenants the applicant wants to have. If the applicant has 10 feet less the building would not be leasable.

George Atallah, owner, stated the purpose of this request is because of the shape of the property going to depth in the left side. He is also stated he to set the buildings all the way with the setback from the property lines and as he comes to the right he to use the depth of the building to a point where he only had 42 feet on the right side of the property to allow the setbacks for the parking, the landscape buffer, and the fire lane. He is further stated he could not utilize the entire property so he had to work with it. He stated he could not move the wall back because there are a lot of heritage trees back there that he is trying to save.

The following citizen(s) appeared to speak:

Thomas Llewellyn, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-048 closed.

MOTION

A motion was made **Mr. Rodriguez**. In Appeal Case No. A-08-048, **Mr. George Atallah**, the applicant is requesting a **complete 10-foot variance from the Hill Country Gateway Corridor District Plan Requirement that a minimum 25-foot front natural buffer be maintained for properties along IH-10 in order to allow a 15-foot natural buffer along the front property line**, legal description **Lots 132 and 133, Block 1, NCB 18338**, at the address of **23127 and 23103 IH-10 West**, zoning **"C-2 GC-1" and "O-1 GC-1"**. I move that we grant this appeal Case No. A-08-048 because the testimony presented to us and the facts that we have determined show that the physical character of his property is such that a literal enforcement of the provisions of the Unified Development Code as amended would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **there have been special concessions with the respect to the buffer zone and that the code or rather the zoning be respected and it is "C-2 GC-1" "O-1 GC-1"**. The code will be respected. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship **the person presented this appeal has done everything possible to respect the overall conditions which are said by the Unified Development Code**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the authorization will be exactly for that to maintain the overall integrity of the area**. Such variance will not substantially or permanently injure the district in which that variance is sought in that **there is no ill intent on behalf of the person presenting this appeal**. Such variance will not alter the essential character of the districts in which the variance is sought in that **it will be very minimal the effect that this variance if approved will have on the general area**. Such variance will be in harmony with the spirit and purpose of this chapter in that **again the zoning will be respected and the overall integrity of this community will not be significantly affected**. The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created and not merely financial and are not due to or the result of the general conditions in the district in which the property is located in that **again the applicant is doing everything to comply with all set rules set forth by the Unified Development Code**. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district **as said it will not substantially weaken and that is something that the owner is doing their very best to comply with a set rules**. The variance will not adversely affect the public health, safety or welfare of the public in that **again by respecting the zoning said will be respected which is the public health, the safety, or welfare of the public**. Staff is recommending approval of the requested variance. The motion was seconded by **Ms. Dutmer**.

AYES: Camargo, Gallagher, Dutmer

NAYS: Rodriguez, Klein, Rogers, Cruz, Hardemon, Moffat, Alejos

THE VARIANCE WAS NOT GRANTED.



CASE NO. A-08-046

Applicant – Eliazar Sanchez.

Lots 9, 10, 11, Block 4, NCB 3125

2038 East Houston Street

Zoned: "C-3 R" Commercial District, Restricted Alcoholic Sales

The applicant is requesting for 25-foot variance from the Unified Development Code requirement that a minimum 30-foot rear setback be maintained for "C-3" zoning districts, in order to keep an existing structure 5-feet from the rear property line.

Michael Farber, Planner, presented background and staff's recommendation of denial of this case. He indicated that there were 30 notices mailed, 2 notices were returned in favor and 0 notices were returned in opposition.

Eliazar Sanchez, owner, stated the purpose of this request is to continue his construction. He further stated he was not able to get permits due to the fact that he poured the slab. He also stated was under the understanding that he did not need to pull building permits.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-046 closed.

MOTION

A motion was made by **Mr. Alejos**. In the matter regarding Appeal No. **A-08-046**, variance request **a 25-foot variance from the Unified Development Code requirement that a minimum 30-foot rear setback be maintained for "C-3" zoning districts, in order to keep an existing structure 5-feet from the rear property line**, the subject property described as **Lots 9, 10, 11, Block 4, NCB 3125**, located at **2038 East Houston Street**, zoned **"C-3 R"**, applicant being **Mr. Eliazar Sanchez**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-046**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **although the existing foundation was constructed prior to permits being pulled it does appear from testimony that the owner attempted to correct his failure in not pulling the permits prior to reporting a new foundation**. Due to the special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the owner has made extensive improvements and denial of the variance would result in a hardship**. So that the spirit of the ordinance is observed and substantial justice is done in that **the existing foundation would not adversely affect the surrounding area**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the districts in which the property for which the variance is sought is located in that **the owner will comply with any**

code requirements to satisfy those requirements. Such variance will not substantially or permanently injure the district in which that variance is sought in that **the proposed building will service a car sales office.** Such variance will not alter the essential character of the districts in which the variance is sought in that **the subject is currently vacant with the exception of a concrete slab.** Such variance will be in harmony with the spirit and purpose of this chapter in that **it will comply with the city code requirements when construction is completed.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created and not merely financial and are not due to or the result of the general conditions in the district in which the property is located in that **there was an existing prior slab that existed there.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **the anticipated construction will be done according to city code requirements.** The variance will not adversely affect the public health, safety or welfare of the public in that **the intended use of the property will be again in compliance with city code requirements.** The motion was seconded by **Mr. Rodriguez.**

AYES: Alejos, Rodriguez, Cruz, Camargo, Gallgaher

NAYS: Hardemon, Moffat, Dutmer, Klein, Rogers

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-024

Applicant – Drury Southwest, Inc.

The south 73.23 feet of Lot 37, Block 9, NCB 8672

8818 Jones Maltsberger

Zoned: "C-3" Commercial District

The applicant is appealing the decision of the Director of the Development Services Department to follow the Board of Adjustment's recommendation in Case A-08-024 to uphold the Chief Sign Inspector's decision to issue a stop work order for the reconstruction of an on-premise free-standing pole sign, and the interpretation of Chapter 28, Section 245 by the Chief Sign Inspector that the reconstruction of an on-premise freestanding sign cabinet from a nonconforming sign, without first obtaining the proper approvals, resulted in the termination of nonconforming rights to the sign.

Mr. Klein would like to indicate that Case A-08-024 was called and moved back to the agenda and no applicant appeared today.

MOTION

Ms. Moffat moved for the Board of Adjustment to dismiss **Case No. A-08-024** due to no applicant present for this case.

AYES: Moffat, Klein, Cruz, Alejos, Rogers, Hardemon, Gallagher

NAYS: Rodriguez, Dutmer, Camargo

THE MOTION WAS CARRIED.

Discussion of potential Unified Development Code amendments

Chris Looney discussed potential UDC amendments to be proposed by Board of Adjustment members.



Mr. Alejos left at 4:41 p.m.


Approval of the Minutes

Ms. Dutmer made a motion to approve March 3, 2008 minutes as amended and was seconded by Ms. Rogers and all members voted in the affirmative.

Staff Report

Mr. Looney stated staff is waiting for additional evidence from the police department regarding the SOB case.

APPROVED BY:  OR 
D. Mike Villyard, Chairman Michael Gallagher, Vice-Chair

ATTESTED BY:  DATE: 4-7-08
Christopher J. Looney
Development Services
Planning Manager